

Evidence and Enforcement Tools For Prosecuting Waste Tire Cases



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What is Evidence?

On the Online Journal (<http://www.onlinejournal.com/Commentary/1444461000/1444461000.html>) also in the June 27th American Political Journal (and prior dates)

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities.

The public deserves to know if some press outlets are favored by the government over others. Without seeing what information that these press agencies received, there is no way to determine on the consistency of the government's disposal of information.

If my request is denied in whole or part, I state that you justify all denials by reference to specific exemptions of the act. I will also request you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your contact reaching with me by telephone, rather than by mail, if you have questions regarding this request.

Please provide expedited review of this request which concerns a matter of urgency. As a journalist, I am primarily engaged in disseminating information.

The public has an urgent need for information about the consistency of the G W Bush military records issued to the news media in 1999 year and if there has been any attempt by the government to favor media sources, then the public deserves to elect them.

I certify that my statements concerning the need is to the best of my knowledge and belief.

I look forward to your reply within 20 business days.

Thank you for your assistance.

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Evidence is...."Stuff"

- Testimony
- Writings
- Materials
- Objects or
- Things offered to prove the existence or nonexistence of a fact.

Evidence Code §140



When do you need evidence?

- Cleanup and Abatement Order
- Administrative Complaint
- Court
- Administrative hearing
- Settlement discussions



What kind of evidence do we want?

- [For hearing or trial] No evidence is admissible except relevant evidence.
Evid. Code §350.
- Relevant evidence includes evidence to
 - prove or disprove any disputed fact or
 - is relevant to the credibility of a witness.

Evid. Code § 210.



Evidence 101

- 1) Establish **Relevancy** of the evidence
- 2) Establish **Authenticity** of the evidence



Establish Authenticity

- Proving the evidence you have is what you say it is
- Example: hauler registration history scanned from WTMS
- Example: photo accurately reflects the respondent's tire pile as seen at a particular tire store on a certain day



Things Not to Worry About

- “Best” evidence (copies are fine)
- Direct vs. circumstantial evidence (both have the same weight)
- Hearsay (usually there is a way to get it in)
- Digital vs. film photos

Typical Evidence

- Witness testimony
- Documents
- Photos
- Samples

Administrative Subpoena

- Use when information needed to prove case and violator is not cooperating
- Can seek contempt sanctions if non-responsive to information requests



Inspection Warrants

- Use to **inspect** when owner/operator does not consent to access
- Use for purposes of **abatement** of waste tire piles if:
 - unidentifiable owner and responsible party; or
 - Cleanup and Abatement Order and Administrative Penalties are in effect



Hauler Penalty Table For Administrative Actions

- Penalty Table: 14 CCR section 18464
- Factors to consider when assessing penalty
- Collection issue: must file complaint in Superior Court after administrative decision



Failure to Manifest Violations

- Hauler or generator
- Required to complete manifest
- If more than 9 waste or used tires hauled

Misrepresentation of Information on Manifests

- Hauler
- Completed Manifest
- Significant Information is incorrect
 - Admissions, other documents such as invoices



Unregistered Hauling Violations

- Person or Business
- Hauled more than 9 waste/used tires
- Not Registered
 - Need declaration from CIWMB



Contracting with an Unregistered Hauler

- Person or Business
- Contracted
- Unregistered Waste Tire Hauler



Hauling Waste Tires to Unauthorized Facility

- Hauler
- Hauled more than 9 waste tires
- To unpermitted waste tire facility
- Not exempt or authorized collection facility
 - Exemptions:
 - Tire dealer or auto dismantler with less than 1500 waste tires for less than 90 days;
 - Other

Hauler Registration Denial/Revocation

- Use for egregious hauler violations
- Terminates ability to haul legally up to 5 years
- Can also impose penalties



Waste Tire Storage Penalties

- Penalty Table: 14 CCR section 18429
- Factors to consider when assessing penalty
- Collection: clerk's judgment/lien

Waste Tire Facility Storage Violations

- Major Waste Tire Facility: Unpermitted Facility with 5000 or more waste tires
- Minor Waste Tire Facility: Unpermitted facility with 500 to 4999 waste tires
- Less than 500 Waste Tires
 - Not enforceable by State Statute

Evidence Needed for Unpermitted Waste Tire Facilities

- Complete and detailed inspection reports
 - admissions, excuses made by violator
 - method used to count tires – you can show calculations
 - Photos – indicate date, time, approximate location on digital photo

Evidence for Waste Tire Facility Violations (cont.)

- Inspection reports
 - Are waste tires on sidewalk, near weeds, or near other flammable materials?
 - Note if you see vectors or tires filled with water or if facility is not in compliance with fire prevention regulations



Permitted Facilities

- Check permit conditions for tire capacity, water, fire prevention standards
- Check that water connections are hooked up
- Do storage conditions comply with the vector plan?



Recent Examples of Waste Tire Storage Cases

- Criminal
- Permitted Facility
- Unpermitted Facility

Referral to CIWMB

- Cleanup and Abatement Order
- Administrative Complaint, Criminal Action, or Consent to Clean and Lien



Rules to Remember

- Evidence is necessary to prove each element of a violation
- Keep meticulous documentation
- Assume every case will go to hearing
- Talk to your attorney!